

PART IV - REPRESENTATIONS AND INSTRUCTIONS**SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS
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SECTION K

REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

K.1 FAR 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--
 - (1) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of this contract;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

K.2 FAR 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)**(a) Definitions.**

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a social security number or an employer identification number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the government to collect and report on any delinquent amounts arising out of the offeror's relationship with the government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

☐ TIN:_____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ offeror is an agency or instrumentality of a foreign government;

☐ offeror is an agency or instrumentality of the federal government.

(e) Type of Organization.

☐ sole proprietorship;

☐ partnership;

☐ corporate entity (not tax-exempt);

☐ corporate entity (tax-exempt);

☐ government entity (federal, state, or local);

☐ foreign government;

☐ international organization per 26 CFR 1.6049-4;

☐ other_____.

(f) Common parent.

☐ offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ name and TIN of common parent:

Name _____

TIN _____

K.3 FAR 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)

(a)

(1) The offeror certifies, to the best of its knowledge and belief, that—

(i) The offeror and/or any of its principals—

(a) are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency;

- (b) have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
- (c) are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(b) of this provision.
- (ii) The offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any federal agency.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.

- (b) The offeror shall provide immediate written notice to the contracting officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the contracting officer may render the offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge

and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the government, the contracting officer may terminate the contract resulting from this solicitation for default.

K.4 FAR 52.214-16 MINIMUM BID ACCEPTANCE PERIOD (APR 1984)

- (a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.
- (b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.
- (c) The Government requires a minimum acceptance period of 270 calendar days [*the Contracting Officer shall insert the number of days*].
- (d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

The bidder allows the following acceptance period: _____ calendar days.

- (e) A bid allowing less than the Government's minimum acceptance period will be rejected.
- (f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within—
 - (1) The acceptance period stated in paragraph (c) of this clause; or
 - (2) Any longer acceptance period stated in paragraph (d) of this clause.

K.5 FAR 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 2004) ALTERNATE I (APR 2002)

- (a)
 - (1) The North American Industry Classification System (NAICS) code for this acquisition is 562910.

- (2) The small business size standard is 500 employees. [insert size standard].
 - (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (b) Representations.
- (1) The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.
 - (2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.
 - (3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.
 - (4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it ☐ is, ☐ is not a veteran-owned small business concern.
 - (5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.
 - (6) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—
 - (i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

- _____ Black American.
- _____ Hispanic American.
- _____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- _____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- _____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- _____ Individual/concern, other than one of the preceding.

(c) Definitions. As used in this provision—

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

“Service-disabled veteran” means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

“Veteran-owned small business concern” means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d) Notice.

- (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.
- (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm’s status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

- (i) Be punished by imposition of fine, imprisonment, or both;
- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

K.6 FAR 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that--

- (a) It ☐ has, ☐ has not participated in a previous contract or subcontract subject to the equal opportunity clause of this solicitation;
- (b) It ☐ has, ☐ has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.7 FAR 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The offeror represents that

- (a) it ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the secretary of labor (41 CFR 60-1 and 60-2); or
- (b) it ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the secretary of labor.

K.8 FAR 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 report required by that clause.

K.9 FAR 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

- (a) Executive Order 13148, of April 21, 2000, greening the government through leadership in environmental management, requires submission of this certification as a prerequisite for contract award.
- (b) By signing this offer, the offeror certifies that—
 - (1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in Section 313 of the emergency planning and community right-to-know act of 1986 (EPCRA) (42 U.S.C. 11023) and Section 6607 of the pollution prevention act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the toxic chemical release inventory form (Form R) as described in Sections 313(a) and (g) of EPCRA and Section 6607 of PPA; or
 - (2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: [check each block that is applicable.]
 - ☐ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
 - ☐ (ii) The facility does not have 10 or more full-time employees as specified in Section 313(b)(1)(a) of EPCRA, 42 U.S.C. 11023(b)(1)(a);
 - ☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under Section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
 - ☐ (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
 - (a) major group code 10 (except 1011, 1081, and 1094).
 - (b) major group code 12 (except 1241).
 - (c) major group codes 20 through 39.

- (d) industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
- (e) industry code 4953 (limited to facilities regulated under the resource conservation and recovery act, subtitle c (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

- ☐ (v) The facility is not located in the United States or its outlying areas.

K.10 FAR 52.225-2 BUY AMERICAN ACT CERTIFICATE (JUNE 2003)

- (a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act-Supplies."
- (b) Foreign End Products:

Line Item No.:	Country of Origin:

[List as necessary]

- (c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

K.11 FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUN 2000)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. Disclosure statement--cost accounting practices and certification

- (a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the cost accounting standards board (48 CFR chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.
- (b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR chapter 99 must, as a condition of contracting, submit a disclosure statement as required by 48 CFR 9903.202. When required, the disclosure statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a disclosure statement disclosing the practices used in connection with the pricing of this proposal. If an applicable disclosure statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a disclosure statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

- ☐ (1) Certificate Of Concurrent Submission Of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the disclosure statement have been submitted as follows:

- (i) original and one copy to the cognizant administrative contracting officer (ACO) or cognizant federal agency official authorized to act in that capacity (federal official), as applicable, and
- (ii) one copy to the cognizant federal auditor.

(Disclosure must be on form no. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or

federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of disclosure statement: _____

Name and address of cognizant ACO or federal official where filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the disclosure statement.

☐ (2) Certificate Of Previously Submitted Disclosure Statement.

The offeror hereby certifies that the required disclosure statement was filed as follows:

Date of disclosure statement: _____

Name and address of cognizant ACO or federal official where filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

☐ (3) Certificate Of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the contracting officer immediately.

☐ (4) Certificate Of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this

subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a disclosure statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the contracting officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed disclosure statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost accounting standards--eligibility for modified contract coverage

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the disclosure and consistency of cost accounting practices clause in lieu of the cost accounting standards clause.

- ☐ The offeror hereby claims an exemption from the cost accounting standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the disclosure and consistency of cost accounting practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the contracting officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. Additional cost accounting standards applicable to existing contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the cost accounting standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ yes

☐ no

K.12 DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)

Notices

Section 2536 of Title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a facility clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy facility clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE facility clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of certificate pertaining to foreign interests, Standard Form 328

- (1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a facility clearance for the contractor organization and access authorizations (security clearances) for contractor personnel working with the classified information or special nuclear material. To obtain a facility clearance the offeror must submit a certificate pertaining to foreign interests, Standard Form 328, and all required supporting documents to form a complete foreign ownership, control or influence (FOCI) package.
- (2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.
- (3) Following submission of a Standard Form 328 and prior to contract award, the contractor shall immediately submit to the contracting

officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the federal trade commission, or the department of justice must also be furnished concurrently to the cognizant security office.

(b) Definitions

(1) Foreign interest means any of the following:

- (i) a foreign government, foreign government agency, or representative of a foreign government;
- (ii) any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
- (iii) any person who is not a citizen or national of the United States.

(2) Foreign Ownership, Control, or Influence means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) Facility clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A facility clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all contractors or subcontractors requiring access authorizations be processed for a facility clearance at the level appropriate to the activities being performed under the contract. Approval for a facility clearance shall be based upon:

- (1) a favorable Foreign Ownership, Control, or Influence (FOCI) determination based upon the contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the contractor;

- (2) a contract or proposed contract containing the appropriate security clauses;
 - (3) approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
 - (4) an established reporting identification symbol code for the nuclear materials management and safeguards reporting system if access to nuclear materials is involved;
 - (5) a survey conducted no more than 6 months before the facility clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;
 - (6) appointment of a facility security officer, who must possess or be in the process of obtaining an access authorization equivalent to the facility clearance; and, if applicable, appointment of a materials control and accountability representative; and
 - (7) access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the facility clearance.
- (d) A facility clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The contracting officer may require the offeror to submit such additional information as deemed pertinent to this determination.
- (e) A facility clearance is required even for contracts that do not require the contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.
- (f) Except as otherwise authorized in writing by the contracting officer, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any subcontractors requiring access authorizations for access to classified

information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, certificate pertaining to foreign interests, directly to the prime contractor or the contracting officer for the prime contract.

Notice to offerors - contents review
(please review before submitting)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

- (1) the Standard Form 328 has been signed and dated by an authorized official of the company;
- (2) if publicly owned, the contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
- (3) a copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;
- (4) a list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and
- (5) a summary FOCI data sheet.

Note: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

**K.13 DEAR 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST
DISCLOSURE- ADVISORY AND ASSISTANCE SERVICES (JUN 1997)**

- (a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the

person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

- (b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.
- (c) The statement must contain the following:
 - (1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.
 - (2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.
- (d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

K.14 DEAR 970.5227-7 ROYALTY INFORMATION (DEC 2000)

- (a) Cost or charges for royalties. If the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:
- (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price of contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties.
- (b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

K.15 SIGNATURE/CERTIFICATION

By completing and submitting a proposal/bid via Industry Interactive Procurement System (IIPS), the bidder/offeror certifies, under penalty of law, that the representations and certifications are accurate, current, and complete. The bidder/offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certifications made by the bidder/offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under 18 U.S.C. 1001.

Typed name and title of the officer or employee
responsible for the bid/offer

Date of Execution

Name of Organization

Street

City, State

Solicitation Number**K.16 AGREEMENT TO USE NON-FEDERAL EVALUATORS**

DOE may employ non-Federal evaluators (including employees of DOE contractors) to assist in evaluating proposals submitted in response to Solicitation No. DE-RP30-06CC30000. All such non-Federal evaluators are required to sign appropriate non-disclosure and conflict of interest statements prior to any such engagement. By submission of signed Offer under this solicitation, the Offeror consents to such review by non-Federal evaluators.